

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
At Beckley

UNITED STATES FIDELITY  
& GUARANTY COMPANY,

Plaintiff

v.

CIVIL ACTION NO: 5:03-0702

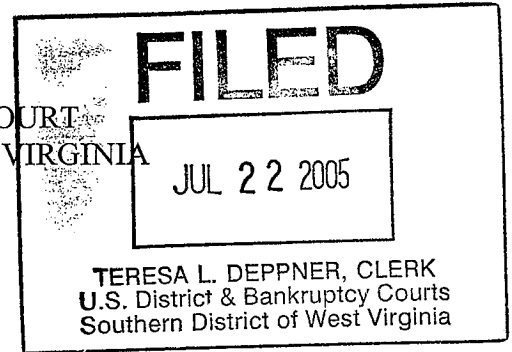
CHARLIE SANDERS,  
LORETTA BAILEY, Administratrix of  
The ESTATE OF SHAWN KEITH  
BAILEY, DARREN C. LUSK, D/B/A BIG  
CHIG, INC., BLUESTONE COAL COMPANY,  
LOGAN & KANAWHA COAL CO., INC.,  
KAT TRUCKING COMPANY, and  
RONNIE JOE LUSK,

Defendants.

**BLUESTONE'S MOTION FOR SUMMARY JUDGMENT**

Bluestone Coal Company ("Bluestone"), by counsel, George J. Joseph, Christopher R. Arthur, and the law firm of Bailey & Wyant, P.L.L.C., hereby requests that this Honorable Court enter summary judgment in favor of Bluestone and against United States Fidelity and Guaranty Company ("USF&G") in this matter. In support of this motion, Bluestone states as follows:

1. USF&G issued Commercial Auto policy PD85P00168 to Darren C. Lusk d/b/a Big Chig, Inc., Big Chig Trucking and J&H Trucking for the period November 30, 2001 to November 30, 2002. This policy provides coverage for non-owned autos.
2. Defendant Darren Lusk ("Lusk") entered into a verbal agreement with Bluestone to haul coal from certain Bluestone sites. As part of that verbal agreement, Lusk was required to add Bluestone as an additional insured, and USF&G's authorized insurance agent issued a Certificate of Insurance listing Bluestone as an additional insured on the Big Chig policy.



3. Defendant Big Chig, Inc. ("Big Chig") then entered into a subcontract with Defendant KAT Trucking Company ("KAT Trucking") to haul coal from the Bluestone site. None of these subcontractors, including KAT Trucking, had a contract or agreement with Bluestone. On April 15, 2002, a KAT Trucking employee, while driving a truck owned by KAT Trucking and while hauling coal from the Bluestone site, was involved in an accident with a pick-up truck driven by Shawn Bailey. Mr. Bailey was killed and his passenger, Charlie Sanders, was seriously injured.

4. Mr. Bailey's estate and Mr. Sanders filed suit against Bluestone, Big Chig and certain other defendants. Big Chig tendered defense of this claim to USF&G. USF&G denied coverage and initiated this declaratory judgment action.


5. The undisputed facts establish that USF&G is estopped from denying that Bluestone is an additional insured under the commercial auto policy issued to Big Chig.

6. The undisputed facts further establish that the KAT Trucking truck involved in the accident was a covered non-owned auto under the Big Chig commercial auto policy.

For these reasons, and the reasons set forth in Bluestone's memorandum in support of this motion, Bluestone requests that this Honorable Court enter summary judgment against USF&G and in favor of Bluestone holding that USF&G has a duty to defend and indemnify Big Chig and Bluestone in connection with Bailey and Sanders' claims.

Respectfully submitted this 22nd day of July 2005.

**BLUESTONE COAL COMPANY**  
*By Counsel*

  
\_\_\_\_\_  
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**UNITED STATES FIDELITY  
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**Plaintiff,**

**v.**

**CIVIL ACTION NO. 5:03-0702**

**CHARLIE SANDERS, LORETTA BAILEY,  
Administratrix of the ESTATE OF SHAWN  
KEITH BAILEY, DARREN C. LUSK, D/B/A  
BIG CHIG, INC., BLUESTONE COAL  
COMPANY, LOGAN & KANAWHA COAL  
CO., INC., KAT TRUCKING COMPANY, and  
RONNIE JOE LUSK,**

**Defendants.**

**CERTIFICATE OF SERVICE**

The undersigned counsel for Defendant Bluestone Coal Corporation does hereby certify that the foregoing **Bluestone Coal Company's Motion for Summary Judgment and Memorandum in Support of its Motion for Summary Judgment** has been served upon the following counsel of record by this day mailing true copies thereof:

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Keith Bailey*

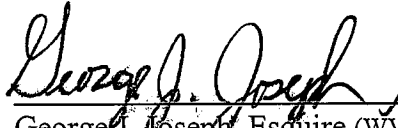
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Dated this 22<sup>nd</sup> day of July, 2005.

**BLUESTONE COAL CORPORATION**  
By counsel

 *with permission*  
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